

By: Canales

H.B. No. 1960

A BILL TO BE ENTITLED

AN ACT

relating to the automatic expunction of arrest records and files for certain veterans and the waiver of fees and costs charged for the expunction.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 55.01(a), Code of Criminal Procedure, is amended to read as follows:

(a) A person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

(1) the person is tried for the offense for which the person was arrested and is:

(A) acquitted by the trial court, except as provided by Subsection (c); or

(B) convicted and subsequently:

(i) pardoned for a reason other than that described by Subparagraph (ii); or

(ii) pardoned or otherwise granted relief on the basis of actual innocence with respect to that offense, if the applicable pardon or court order clearly indicates on its face that the pardon or order was granted or rendered on the basis of the person's actual innocence; or

(2) the person has been released and the charge, if

1 any, has not resulted in a final conviction and is no longer pending  
2 and there was no court-ordered community supervision under Article  
3 42.12 for the offense, unless the offense is a Class C misdemeanor,  
4 provided that:

5 (A) regardless of whether any statute of  
6 limitations exists for the offense and whether any limitations  
7 period for the offense has expired, an indictment or information  
8 charging the person with the commission of a misdemeanor offense  
9 based on the person's arrest or charging the person with the  
10 commission of any felony offense arising out of the same  
11 transaction for which the person was arrested:

12 (i) has not been presented against the  
13 person at any time following the arrest, and:

14 (a) at least 180 days have elapsed  
15 from the date of arrest if the arrest for which the expunction was  
16 sought was for an offense punishable as a Class C misdemeanor and if  
17 there was no felony charge arising out of the same transaction for  
18 which the person was arrested;

19 (b) at least one year has elapsed from  
20 the date of arrest if the arrest for which the expunction was sought  
21 was for an offense punishable as a Class B or A misdemeanor and if  
22 there was no felony charge arising out of the same transaction for  
23 which the person was arrested;

24 (c) at least three years have elapsed  
25 from the date of arrest if the arrest for which the expunction was  
26 sought was for an offense punishable as a felony or if there was a  
27 felony charge arising out of the same transaction for which the

1 person was arrested; or

2 (d) the attorney representing the  
3 state certifies that the applicable arrest records and files are  
4 not needed for use in any criminal investigation or prosecution,  
5 including an investigation or prosecution of another person; or

6 (ii) if presented at any time following the  
7 arrest, was dismissed or quashed, and the court finds that the  
8 indictment or information was dismissed or quashed because:

9 (a) the person completed a veterans  
10 court program created under Chapter 124, Government Code, or former  
11 law;

12 (b) the person completed a pretrial  
13 intervention program authorized under Section 76.011, Government  
14 Code, other than a veterans court program created under Chapter  
15 124, Government Code, or former law;

16 (c) [because] the presentment had  
17 been made because of mistake, false information, or other similar  
18 reason indicating absence of probable cause at the time of the  
19 dismissal to believe the person committed the offense; or

20 (d) [, or because] the indictment or  
21 information was void; or

22 (B) prosecution of the person for the offense for  
23 which the person was arrested is no longer possible because the  
24 limitations period has expired.

25 SECTION 2. Section 1a, Article 55.02, Code of Criminal  
26 Procedure, is amended by adding Subsection (a-1) to read as  
27 follows:

1        (a-1) A trial court dismissing a case following a person's  
2 successful completion of a veterans court program created under  
3 Chapter 124, Government Code, or former law, if the trial court is a  
4 district court, or a district court in the county in which the trial  
5 court is located shall enter an order of expunction for a person  
6 entitled to expunction under Article 55.01(a)(2)(A)(ii)(a) not  
7 later than the 30th day after the date the court dismisses the case  
8 or receives the information regarding that dismissal, as  
9 applicable. Notwithstanding any other law, a court that enters an  
10 order for expunction under this subsection may not charge any fee or  
11 assess any cost for the expunction.

12        SECTION 3. Section 2(a), Article 55.02, Code of Criminal  
13 Procedure, is amended to read as follows:

14        (a) A person who is entitled to expunction of records and  
15 files under Article 55.01(a)(1)(B)(i) or under Article  
16 55.01(a)(2), other than Article 55.01(a)(2)(A)(ii)(a), or a person  
17 who is eligible for expunction of records and files under Article  
18 55.01(b) may file an ex parte petition for expunction in a district  
19 court for the county in which:

20                (1) the petitioner was arrested; or

21                (2) the offense was alleged to have occurred.

22        SECTION 4. Article 102.006(b), Code of Criminal Procedure,  
23 is amended to read as follows:

24        (b) The fees under Subsection (a) shall be waived if[+]

25                [~~1~~] the petitioner:

26                (1) seeks expunction of a criminal record that relates  
27 to an arrest for an offense of which the person was acquitted, other

1 than an acquittal for an offense described by Article 55.01(c), ~~+~~  
2 and

3 ~~[(2)]~~ the petition for expunction is filed not later  
4 than the 30th day after the date of the acquittal; or

5 (2) is entitled to expunction under Article  
6 55.01(a)(2)(A)(ii)(a) after successful completion of a veterans  
7 court program created under Chapter 124, Government Code, or former  
8 law.

9 SECTION 5. Section 124.001(b), Government Code, is amended  
10 to read as follows:

11 (b) If a defendant successfully completes a veterans court  
12 program ~~[as authorized under Section 76.011]~~, after notice to the  
13 attorney representing the state and a hearing in the veterans court  
14 at which that court determines that a dismissal is in the best  
15 interest of justice, the veterans court shall provide to the court  
16 in which the criminal case is pending information about the  
17 dismissal and shall include all of the information required about  
18 the defendant for a petition for expunction under Section 2(b),  
19 Article 55.02, Code of Criminal Procedure. The court in which the  
20 criminal case is pending shall dismiss the criminal action against  
21 the defendant and:

22 (1) if that trial court is a district court, the court  
23 shall enter an order of expunction on behalf of the defendant under  
24 Section 1a(a-1), Article 55.02, Code of Criminal Procedure; or

25 (2) if that trial court is not a district court, the  
26 court shall forward the appropriate dismissal and expunction  
27 information to a district court with jurisdiction to enter an order

1 of expunction on behalf of the defendant under Section 1a(a-1),  
2 Article 55.02, Code of Criminal Procedure.

3       SECTION 6. (a) Except as provided by Subsection (b) of  
4 this section, this Act applies to the expunction of arrest records  
5 and files for a person who successfully completes a veterans court  
6 program under Chapter 124, Government Code, or former law before,  
7 on, or after the effective date of this Act, regardless of when the  
8 underlying arrest occurred.

9       (b) The change in law made by this Act to Article 102.006,  
10 Code of Criminal Procedure, applies to the fees charged or costs  
11 assessed for an expunction order entered on or after the effective  
12 date of this Act, regardless of whether the underlying arrest  
13 occurred before, on, or after the effective date of this Act.

14       (c) For a person who is entitled to expunction under Article  
15 55.01(a)(2)(A)(ii)(a), Code of Criminal Procedure, as amended by  
16 this Act, based on a successful completion of a veterans court  
17 program under Chapter 124, Government Code, or former law before  
18 the effective date of this Act, notwithstanding the 30-day time  
19 limit provided for the court to enter an automatic order of  
20 expunction under Section 1a(a-1), Article 55.02, Code of Criminal  
21 Procedure, as added by this Act, the court shall enter an order of  
22 expunction for the person as soon as practicable after the court  
23 receives written notice from any party to the case about the  
24 person's entitlement to the expunction.

25       SECTION 7. This Act takes effect September 1, 2015.